quinn emanuel trial lawyers | new york
51 Madison Avenue, 22nd Floor, New York, New York 10010-1601 | TEL (212) 849-7000 FAX (212) 849-7100

January 12, 2023

WRITER'S DIRECT DIAL NO.
(212) 849-7364

WRITER'S EMAIL ADDRESS
alexspiro@quinnemanuel.com

VIA VIS ECF

Hon. Edward M. Chen
U.S. District Court–Northern District of California
450 Golden Gate Avenue, Courtroom 5
San Francisco, California 94102

Re: *In re Tesla Inc. Securities Litigation*, No. 3:18-cv-04865-EMC (N.D. Cal.)

Dear Judge Chen:

Defendants respectfully write to correct several obviously false statements in Plaintiff's letter opposing Defendants' request to file a short *Daubert* motion (ECF No. 552). Specifically, the assertion that Defendants "proposed [a] method of calculating out of pocket damages," and that "Plaintiff accepted Defendants' proposal" by offering to compare actual option prices (rather than model-generated prices) to but-for prices, is nonsense. Plaintiff cannot blame his predicament on Defendants. The simple fact is that Plaintiff proposed a flawed options damages methodology, made an *ad hoc* attempt during the Final Pretrial Conference to save it that has resulted in even more serious problems, and now seeks to somehow spin this as of Defendants' making. Not so. Defendants have never "proposed" that the use of actual option prices would somehow save Plaintiff's fundamentally flawed methodology regarding options damages or would not lead to other serious problems. This is because (a) it is not Defendants' burden to propose a damages methodology, and (b) Defendants never had the opportunity—Plaintiff proposed substituting actual option prices for model-based prices for the first time during the Final Pretrial Conference. To the contrary, had Defendants actually been given the opportunity, they would have explained to the Court that even Plaintiff's own expert Professor Heston agrees that comparing actual option prices to but-for prices, *without accounting for certain other factors* (such as the bid-ask spread), leads to erroneous results. But the point is that Defendants never had that opportunity to make this argument and thus respectfully request it now.

Respectfully submitted,

/s/ Alex Spiro

Alex Spiro

cc: All counsel of record via ECF